

APPEAL NO. 93301

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01-11.10 (Vernon Supp. 1993) (1989 Act). A contested case hearing was held on December 16, 1992, in (city), Texas, before hearing officer (hearing officer). The issues were stated and agreed to as follows: whether the claimant timely reported an injury to her employer; whether claimant's alleged mental trauma resulted from legitimate personnel actions; and whether carrier properly contested compensability of this claim under the Act, Article 8308-5.21. The appellant, hereinafter claimant, seeks our review of the hearing officer's determination of these issues in respondent's (hereinafter carrier) favor. The claimant also asks this panel to review as in excess of his authority the hearing officer's finding of fact that the claimant did not experience damage or harm in the form of mental stress from an injury traceable to a definite time, place and cause while employed by her employer, including any cause relating to personnel actions. The carrier responds that the hearing officer's determination is supported by sufficient evidence, and that pursuant to the evidence the hearing officer properly made the above-mentioned finding of fact.

DECISION

We affirm the decision and order of the hearing officer.

The claimant worked in the billing department of (claimant's employer, which is self-insured, will be referred to as "carrier"). She testified that she had frequent conflicts with a coworker, (MB), who she claimed harassed her and tried to sabotage her work. On (date of injury), the claimant became hysterical at work because she said she was trying to do her job and was unable to do so because she said MB kept disconnecting her computer and then would laugh at her. Claimant said on that day she tried to talk to MB about the need for them to be able to work together, but that MB told her that "everything I've gotten I deserved, and as long as I worked there she would torture me." At that point claimant said she "just couldn't take it any more" and went into a bathroom and became hysterical.

Claimant was taken by (Ms. B), carrier's bookkeeper and assistant to the hospital administrator, to see (Dr. J), claimant's regular doctor who officed in employer's building, who gave her a sedative and called her husband. Claimant's husband testified at the hearing that when he arrived claimant "couldn't make any sense." He also said that she had told him in the previous weeks that she had had problems at work but that the hospital administrator, (Mr. G) had not pursued them. He said he went to find Mr. G and told him claimant was in Dr. J's office, "she couldn't hold a sentence together, and I felt like she was having a nervous breakdown." Due to some ensuing confusion in which claimant's husband grabbed Mr. G's arm and apparently asked him to step outside, the police were called and claimant's husband was removed from the premises. Mr. G said he did not remember claimant's husband saying that claimant had been hurt.

Claimant contended the harassment by MB had occurred since January of 1992, and that she had complained to Mr. G about it on a weekly basis for about four and one-half months. She said she again spoke to Mr. G three days after the March 18th incident and told him everything that had happened that day, but that he told her, "[o]ne tends to imagine things." She said on March 18th she had also told Ms. B that she was "falling apart" and "couldn't take it anymore." She had also spoken both before and after March 18th with individual members of carrier's board of directors, about MB and about other work-related problems. She telephoned two board members shortly after the incident on March 18th, and told them about it. She believed her job had been threatened because Mr. G, at a staff meeting, had warned employees about talking to board members; however, Mr. G denied this at the hearing. Mr. G also denied that any personnel actions had been taken against claimant. The claimant continued to work for employer until May 13, 1992. Records show that she missed 23 days of work between March 18th and May 13th.

Both Mr. G and (Ms. D), carrier's director of medical records, said they were unaware that claimant was alleging a work-related injury until the end of May or the first of June. Mr. G said he had spoken with carrier's two board members who had talked to claimant about her problems with MB; with Ms. B, who assisted claimant to Dr. J's office; and with Dr. J, who had called him on March 18th. He said he did not remember the board members talking to him about a specific problem on March 18th; he assumed Ms. B had told him she had found claimant crying in the bathroom; and he said he recalled Dr. J saying he was going to send claimant home for that day. He also said he was aware claimant had missed several days of work after March 18th and had understood her problem was "nerves." Mr. G also testified that Ms. B had no supervisory authority over claimant or any other employee, although he said she was able to act for him when he was absent from work.

Ms. B testified that on March 18th, when she went to see why claimant was not responding to telephone calls, she found claimant crying and asked her whether she wanted Dr. J to help her. Ms. B said claimant did not give any indication at that time why she was crying. Ms. D said she worked with claimant; she said the job was not particularly stressful although she acknowledged that her duties were different from claimant's. Ms. D was aware of claimant's conflict with MB, but said she did not know whether MB was sabotaging claimant's work, and that she did not investigate such claims.

The claimant had been treated for numerous physical problems prior to March 18th. These included abdominal pain and spasms, irritable bowel syndrome, and gall bladder surgery. She was also treated by Dr. J for emotional problems in 1989. Dr. J's initial medical report filed on June 8, 1992, notes that claimant had had a laproscopic cholecystectomy several weeks prior to March 18th and that she had admitted to being in a lot of stress over the past several months. Other medical records in evidence show that in March 1992 Dr. J referred claimant to (Dr. C), a gastroenterologist who treated her for

problems related to epigastric burning, vomiting and nausea, and weight loss. Dr. C's letter of November 2, 1992 says the claimant related her abdominal pain to stress at work, but said he was "unable to recall any specific event at work that may have contributed to the onset of her abdominal pain problems and stress." Claimant also treated with Dr. L. (Dr. S), a psychiatrist who, on November 4th, wrote as follows: "Psychodynamically, the conditions at work were injurious to [claimant]. [Claimant's] source of self esteem, i.e. competency at job performance was being threatened. Also the particular circumstances of [claimant] being mistreated and then reporting that mistreatment to authority figures with conditions only worsening after that, recreated for [claimant] feelings of victimization that she had experienced earlier in life." Medical records from St. Anthony's Hospital show claimant was admitted on May 13th because of depression and that she received treatment there from May until at least July of 1992. She was admitted to employer's facility on August 4, 1992 following a suicide attempt.

The hearing officer made the following findings of fact which are challenged by the claimant:

FINDINGS OF FACT

4. On or before April 17, 1992, [claimant] did not tell or otherwise notify anyone holding a supervisory or management position with [employer] that she claimed a mental trauma injury.
5. Neither [employer] nor any person in a supervisory or management position with [employer] had actual knowledge of the injury claimed by [claimant] on or before April 17, 1992.
7. [Claimant] did not experience damage or harm in the form of mental stress from an injury traceable to a definite time, place and cause while employed by [employer] including any cause relating to personnel actions.
8. The TWCC-21 "Notice of Refused or Disputed Claim" filed by [carrier] and admitted herein as Claimant's Exhibit No. 1 is a full and complete statement of the grounds for [carrier's] refusal to begin payment of benefits.

I.

Timely Notice

The claimant contends there is insufficient credible evidence to support Finding of Fact No. 4, as Dr. J and claimant's husband attempted to notify Mr. G, and claimant spoke directly with board members. Claimant also contends that she was found by someone (Ms.

B) who had at least apparent authority to act in a supervisory capacity, and that Ms. B had actual knowledge of her injury.

Pursuant to Article 8308-5.01, an employee must notify his employer of an injury not later than the 30th day after the date on which the injury occurs. The effect of failure to notify is to relieve the employer or its carrier from liability unless the employer or his representative has actual knowledge of the injury, good cause exists for the failure to notify, or the employer or its carrier does not contest the claim. Article 8308-5.02. The purpose of the notice requirement--to give the insurer an opportunity to immediately investigate the facts surrounding an injury--can be fulfilled without the need for any particular form of notice; the employer need only know the general nature of the injury and the fact that it is job related. DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980).

While the evidence in this case clearly shows claimant became hysterical while at work on March 18th, and Mr. G said he understood her problem was "nerves," those facts do not necessarily equate to notice to, or knowledge by, her employer that she had suffered an injury that was job related. Despite Mr. G's failure to remember the content of conversations he had with board members and Ms. B, he did remember that he spoke with Dr. J on that date, and that he knew Dr. J sent claimant home for the rest of the day, although he denied knowing the cause of claimant's problem. Dr. J's initial medical report gives claimant's history as, "[claimant] was found in one of the bathrooms in the hospital, crying and upset complaining of nausea and abdominal pain states that she 'Couldn't take it anymore.' Related her problems to the stress of the front office of the hospital." It also released the claimant to full time work the following day. Of some significance is the fact that Dr. J's report, made on Form TWCC-61, was not filed until June 8th, possibly indicating that Dr. J did not understand until that date that claimant's alleged injury could be work related. The hearing officer, as sole judge of the relevance and materiality of the evidence and of its weight and credibility, see Article 8308-6.34(e), was entitled to believe the testimony of Mr. G and other of carrier's employees that they were not notified, nor were they aware, of the general nature of the injury nor the fact that it was work related, DeAnda v. Home Insurance, *supra*. The mere knowledge that claimant began crying at work can be analogized to those cases in which an employee says "I hurt my back" which, without further information connecting such injury to employment, has been held not sufficient to alert the employer or the insurer to an injury occurring in the course and scope of employment. Hotchkiss v. Texas Employer's Insurance Association, 479 S.W.2d 336 (Tex. Civ. App.-Amarillo 1972, no writ). For these reasons, we cannot say that there was insufficient evidence to support the hearing officer's Findings of Fact Nos. 4 and 5.

II.

Legitimate Personnel Action; Contest of Compensability

As noted hereinabove, one of the issues before the hearing officer was whether claimant's alleged mental trauma resulted from legitimate personnel actions. The claimant contends that while Finding of Fact No. 7 mentions the phrase "personnel actions," the hearing officer failed to make a finding on the issue as stated, and requests this panel to reform the hearing officer's decision to find that claimant's alleged mental trauma did not result from legitimate personnel actions, a term of art under Article 8308-4.02(b). The claimant also contends that the hearing officer's language that claimant "did not experience damage or harm to the physical structure of her body" is not required to decide any of the issues before the hearing officer, and exceeds his authority.

The 1989 Act provides as follows with regard to mental trauma injuries:

Article 8308-4.02. Policy statement on mental trauma injuries

- (a) It is the express intent of the legislature that nothing in this Act shall be construed to limit or expand recovery in cases of mental trauma injuries.
- (b) A mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination is not a compensable injury for the purposes of this Act.

The manner in which the hearing officer determined the above-stated issue is raised by the claimant on appeal because the third and final issue before the hearing officer was whether the carrier properly contested compensability of this claim under the Act. Article 8308-5.21 provides that a notice of refusal filed by the carrier must specify the grounds for refusal which constitute the only basis for the carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence. The carrier in this case filed a Form TWCC-21 disputing claimant's claim on three grounds: no medical evidence submitted to substantiate diagnosis of mental trauma relating to an on-the-job injury; any alleged mental trauma claimant may have suffered resulted from legitimate personnel actions, and is therefore not compensable; claimant failed to claim an on-the-job injury to self-insured employer within 30 days of alleged date of injury. The claimant contends that the carrier is limited in its contest of compensability to the grounds stated in its TWCC-21; that the carrier raised the statutory exception to the compensability of mental trauma injuries (i.e., legitimate personnel actions), but that it did not properly contest the compensability of the injury itself.

Although this panel has previously addressed issues concerning whether the language and content of a TWCC-21 meets the Article 8308-5.21 requirement of specificity in refusing a claim, see Texas Workers' Compensation Commission Appeal No. 92145, decided May 27, 1992, we need not do so here because our determination on the issue of timely notice, which clearly was raised by the carrier, renders the additional points of error

moot.

We therefore affirm the hearing officer's decision and order.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge